

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 83

Date Signed: January 14, 1994

MEMORANDUM

SUBJECT: Corrected Attachment I for PWSS Settlement Penalty Calculation Worksheet

FROM: Kathy Summerlee, Deputy Director
Water Enforcement Division
Office Of Regulatory Enforcement, OECA

TO: Regional Water Management Division Directors
Regional Counsels

On May 25, 1994, under signature of Jim Eder and Fred Stiehl, we distributed the Agency's *New Public Water System Supervision Program Supplement Penalty Policy*. Attachment 1 to the Penalty Policy contained a two part worksheet setting forth in summary form how to perform the penalty calculation. The worksheet erroneously had the adjustment factors for degree of wilfulness and history of noncompliance applying to the combined gravity and economic benefit amount. This was a mistake as the text of the policy clearly has these two adjustment factors apply only to the gravity amount.

We have corrected the worksheet to make it fully consistent with the Policy. We have made several other minor clarifying changes to the worksheet. There are no changes to the text of the policy. We would appreciate if you would discard the prior worksheet and substitute the attached corrected worksheet.

Thank you for your assistance. If you have any changes, you may call David Hindin, 202 501-6004, Andy Hudock, 201 501-6032, or Betsy Devlin, 202 260-5550.

Attachment

cc: (w/attachment)

ORC Water Branch Chiefs
Regional PWSS Branch Chiefs
ORE Water Division staff
PWS Regionals Attorneys
John Cruden, DOJ
Joel Gross, DOJ

ATTACHMENT 1 (Corrected 6/14/94)
PWSS SETTLEMENT PENALTY CALCULATION WORKSHEET

INSTRUCTIONS: For each type of violation (see Attachment 2) to be alleged in the administrative or Judicial complaint calculate the statutory maximum penalty, the economic benefit and gravity and record the results in Part A of the worksheet. Complete a separate Part A worksheet for each type of violation, then complete Part B.

NAME OF CASE: _____

COMPLETED BY: _____ Date Completed: _____

PART A

IDENTIFY VIOLATION TYPE:	
1. STATUTORY MAXIMUM PENALTY FOR THIS VIOLATION TYPE	
a. Length of violation (in days)	
b. Penalty Amount (see II. Statutory Basis in text of Policy for amounts)	
c. Maximum Penalty (line 1.a x line 1.b if not administrative)	
2. ECONOMIC BENEFIT FOR THIS VIOLATION TYPE (attach BEN computer model printouts or other documentation)	
3. GRAVITY FOR THIS VIOLATION TYPE	
a. Gravity factor amount (from Attachment 2 Types of Violations)	
b. Service population	
c. Months in violation (_____) divided by 12	
d. Gravity Component: Line 3.a x line 3.b x line 3.c	

4. ECONOMIC BENEFIT + GRAVITY COMPONENT SUM (line 2 + line 3.d)	
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PART B

5. TOTALS FROM ALL PART A WORKSHEETS (for each violation type)	
a. Sum of amounts in line 3.d from all Part A worksheets (total gravity for all violation types)	
b. Sum of amounts in line 2 from all part A worksheets (total economic benefit for all violation types)	
6. GRAVITY ADJUSTMENTS	
a. Degree of Willfulness/Negligence factor (Select a factor value between 1.0 and 2.0)	
b. History of Noncompliance factor (Determine factor value based on instructions on page 7 of policy)	
c. Total Adjusted Gravity Amount (line 6.a x line 6.b x line 5.a))	
7. PRELIMINARY PENALTY AMOUNT (line 5.b + line 6.c)	
8. LITIGATION CONSIDERATION REDUCTION AMOUNT Attach legal explanation to justify any reduction on separate sheet.	
9. ABILITY TO PAY REDUCTION AMOUNT Attach financial analysis to justify any reduction on a separate sheet.	
10. CREDIT AMOUNT FOR ANY SEPS Amount may not exceed after-tax present value of project(s).	
11. BOTTOM-LINE CASH SETTLEMENT PENALTY AMOUNT Line 7 - (line 8 + line 9 + line 10)	

PWSS Civil or Complaint for Penalty Calculation Worksheet

I.	Calculate Statutory Maximum Penalty	
	(A) Length of Violation (in days)	5220
	(B) Maximum Penalty	\$25,000
	Complaint for Penalty - \$5,000	
	Civil Penalty - \$25,000/day	
	Section 1431 orders - \$5,000/day	
	STATUTORY MAXIMUM PENALTY	
	(If not an administrative Penalty, AxB)	\$130,500,000
II.	Calculate Economic Benefit Component	\$4,300
	Determine avoided and delayed costs through BEN model or other reasonable methodology. This must be documented	
III.	Calculate Gravity component	
	(C) Actual or Possible Harm to Human Health	2.4
	Level 1 - 1.1 - 1.5	
	Level 2 - 1.6 - 2.0	
	Level 3 - 2.1 - 2.5	
	Population	1200
	Months in violation	174
	Years in violation	14.50
	(D) Duration of Non Compliance	17400
	GRAVITY COMPONENT (Cx D)	\$41,760
	(no less than \$1,000 in civil judicial and for PWSs serving over 3,300 people in administrative cases)	
	ECONOMIC BENEFIT + GRAVITY COMPONENT	\$46,060
IV.	Adjustment Factors	
	(E) Degree of Willingness or Negligence (1.0 - 2.0)	1.0
	(F) History of Non Compliance	1.58
	(a factor between 1.0 and 1.3 for each enforcement action issued)	
	PRELIMINARY SETTLEMENT AMOUNT	\$70,300

(H)	Ability to pay (to decrease penalty), (Amount of money)	_____
(I)	Litigation Considerations (0.01 - 0.5, 1)	_____

FINAL SETTLEMENT AMOUNT
(Preliminary Settlement Amount - H) x 1 - I

Months in Violations in last 5 years	36
Years in violation in last 5 years	3.0
Municipality and Nonprofit Assoc.	
Litigation Consideration	\$12,900